IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.111 OF 2001

Mishrilal Hiralal Joshi ...Appellant

Vs.

Shyamsunder Jugaraj Joshi & Ors. ...Respondents

Mrs.Anjali N. Helekar for the Appellant.

CORAM: A.S.OKA, J.

DATED: JANUARY 19, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Appellant. The grievance of the learned Counsel for the Appellant is that after recording the findings in favour of the Appellant-Plaintiff, the learned Judge of the Appellate Court has granted only a limited injunction. She submitted that the relief granted is contrary to the findings.

2. The Appellate Court has noted that there is a preliminary decree passed between the parties and final decree proceeding was pending and therefore it cannot be said that the Appellant or the Respondents are the owners of the City Survey No.77. The Trial Court has recorded a finding that the latrine in dispute was in possession of the Respondent No.1. The Appellate Court after noting that no final decree is passed, held that the Appellant is entitled to use the latrine and therefore the Appellate Court restrained the

Respondents from obstructing the use of the latrine by the Appellant. In view of this position, I find no perversity in the impugned Judgement and Decree.

3. In so far as rights of the parties to City Survey No.77 are concerned, the Appellate Court has noted that neither the Appellant nor the Respondents can be said to be the exclusive owners of City Survey No.77 as final decree proceeding was pending on that day. If that is so, the rights of the parties will be decided in the final decree.

4. In view of what is stated above, Second Appeal is dismissed with no order as to costs.

Judge.